

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:95-cr-00132-MR-1

UNITED STATES OF AMERICA,

vs.

MICHAEL LEROY DARITY.

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ORDER

THIS MATTER is before the Court on the Defendant's "Motion for Clarification and/or Out of Time Appeal" [Doc. 311].

On May 10, 2013, the Court entered an Order denying the Defendant's motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). [Doc. 310]. The Defendant did not file an appeal. Instead, nearly three months later, the Defendant filed the present motion seeking "clarification" of the Court's Order. [Doc. 311].

In his "Motion for Clarification," the Defendant essentially seeks reconsideration of the Order denying him a reduction in sentence. The Court finds no grounds for reconsideration of its prior Order and the Defendant's "Motion for Clarification" is therefore denied.

Alternatively, the Defendant seeks an extension of time in which to file an appeal of the Court's Order with the Fourth Circuit Court of Appeals. Federal Rule of Appellate Procedure 4(b) provides that in a criminal case, "a defendant's notice of appeal must be filed in the district court within 14 days after . . . the entry of ... the order being appealed[.]" Fed. R. App. P. 4(b)(1)(A)(i). The Defendant's notice of appeal of the Court's May 10, 2013 Order therefore should have been filed on or before May 24, 2013. Id.

Rule 4 also provides, in pertinent part, as follows:

Upon a finding of excusable neglect or good cause, the district court may -- before or after the time has expired, with or without motion and notice -- extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Fed. R. App. P. 4(b)(4). Other than as provided in Rule 4(b)(4), this Court may not enlarge the time for filing an appeal. United States v. Stockton, 240 F. App'x 601, 601 (4th Cir. 2007).

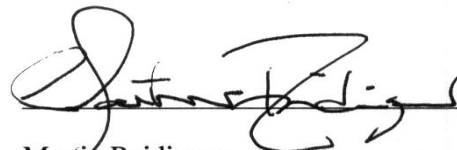
Pursuant to Rule 4(b)(4), the Defendant's motion for extension of time to file an appeal should have been filed no later than June 24, 2013. Because the Defendant's motion was filed well outside of this 30-day window, the Court must deny his motion. See United States v. Raynor, 939

F.2d 191, 197 (4th Cir. 1991) (noting that the time periods contained within Rule 4(b) are “mandatory and jurisdictional”).

IT IS, THEREFORE, ORDERED that the Defendant’s “Motion for Clarification and/or Out of Time Appeal” [Doc. 311] is **DENIED**.

IT IS SO ORDERED.

Signed: August 16, 2013


Martin Reidinger
United States District Judge

